THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 34764 OF 1997

Date : 3-4-2007

Between:

Tirumala Tirupati Devastanams,
Tirupati, rep. by its Executive Officer ... Petitioner

And

P.Muna Swamy and 2 others .... Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 34764 OF 1997

ORDER:

Aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Anantapur dated 19.3.1997, Tirumala Tirupati Devastanams is before this Court.

The 1st respondent filed an application under Section 2(A)(2) of the Industrial Disputes Act before the Labour Court wherein he pleaded that he was appointed as drainage worker under the 2nd petitioner on 15.11.1981, that he had served continuously, that his appointment was ratified in Memo dated 9.12.1981 by the 2nd petitioner by giving duty certificate to the effect that he served from 1.12.1981 to 16.5.1987 and that he suffered from T.B. from 17.5.1987 to 30.4.1988, that he was advised bed rest by the Doctor and that he submitted a medical certificate and obtained leave. The 1st respondent further stated in his claim petition that as there was no improvement in his health condition he was further advised to take rest from 11.5.1988 to 28.2.1991 by Dr.J.Achary, who also issued a medical certificate. The 1st respondent stated that his name is found in the list of N.M.R published by the Tirumala Tirupati Devastanams in its memo dated 26.6.1986, and that when he reported for duty on 29.2.1989, he was not permitted to join duty on the ground that no job is available. The 1st respondent stated that his absence from 17.5.1987 to 28.2.1989 was not willful, that his termination was in violation of Section 25-F of the Industrial Disputes Act and that he was entitled for reinstatement.

It is necessary to note that neither the workman nor the

management adduced any evidence, either oral or documentary. Merely on the basis of pleadings the Labour Court passed the award setting aside the order of termination dated 29.2.1989 and directed the petitioner to reinstate the 1st respondent into service without back wages and attendant benefits.

Sri P.Nageswar Rao, learned standing counsel for Tirumala Tirupati Devastanam, would submit that it is well settled that in the absence of any evidence being let in support of the plea, the Labour Court ought to have dismissed the I.D. and not passed the award merely on the basis of pleadings. Learned counsel would submit that pleadings do not constitute proof and, since the respondents had filed a rejoinder before the Labour Court denying the averments made by the 1st respondent – workman in his claim statement and in as much as the 1st respondent did not choose to adduce any evidence in support of the pleadings in his claim statement, the Labour Court should have dismissed the application filed by the 1st respondent – workman.

Sri K.K.Chakravarthi, learned counsel for the 1st respondent, on the other hand, has placed reliance on a judgment of the Supreme Court in **Bharat Bhawan Trust v. Bharat Bhawan Artists' Association**[1] to contend that the objections regarding maintainability of the respondent – claim was a matter for the Labour Court to examine and, since the Labour Court has passed the award in the 1st respondent's favour, it must be presumed that the application as filed under Section 2-A(2) was maintainable.

In the absence of any evidence on record it was not open to

the Labour Court to pass an award in favour of the 1st respondent merely on the basis of the pleadings more so, when a rejoinder was filed by the petitioner herein denying the averments made in the claim statement. Both the petitioner herein and the 1st respondent – workman did not choose to adduce any evidence before the Labour Court either oral or documentary and in the absence of the pleadings in the claim statement being proved by any evidence on record, the Labour Court was necessarily required to dismiss the application filed by the workman on the ground that no evidence had been let in support of the plea. The award of the Labour Court, directing reinstatement of the 1st respondent – workman, in the absence of evidence on record to substantiate his contention that his services were illegally terminated must necessarily be set aside. The judgment in **Bharat Bhawan Trust**[1] relied upon by the 1st respondent has no application to the facts of the case. In the aforesaid judgment, the Supreme Court held that a preliminary objection regarding maintainability of the workman's claim can be examined by the Labour Court. The question which falls for consideration herein is not to the maintainability of the application filed by the 1st respondent-workman but whether the labour court could have passed an award directing his reinstatement without any evidence being let in support of the pleadings in the claim statement.

The award of the Labour Court in I.D.68 of 1994 dated 19.3.1997, is quashed. The writ petition is allowed. However, in the circumstances, without costs.

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[1] (2001) 7 SCC 630